

COMMITTEE ON GOVERNMENT REFORM

TOM DAVIS, CHAIRMAN



MEDIA ADVISORY

For Immediate Release
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Contact: Robert White / Andrea LeBlanc
(202) 225-5074

Davis to Examine Impact of *Ceballos* Decision

*What Does Recent Supreme Court Decision
Mean For Public Employees' Rights?*

*Witnesses Include Legal Experts, Employee Groups, and
Richard Ceballos, Plaintiff in the Supreme Court Case*

What: Government Reform Committee Oversight Hearing,
“What Price Free Speech?: Whistleblowers and the *Ceballos*
Decision”

When: THURSDAY, June 29, 2006, 11:00 A.M.
(Hearing will immediately follow a business meeting.)

Where: ROOM 2154, RAYBURN HOUSE OFFICE BUILDING

Background: Richard Ceballos, a deputy district attorney for the Los Angeles County District Attorney’s Office, filed a lawsuit claiming that public employees should be protected by the First Amendment from retaliation when they make statements in the course of their employment with which their superiors disagree.

In a 5-4 decision, the United States Supreme Court disagreed, holding that, “when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”

The purpose of this hearing is to understand fully the *Ceballos* decision and how – if at all – this decision affects statutory whistleblower protections. This case did not address statutory whistleblower protections,

and, in fact, the *Ceballos* decision explicitly stated that public employees continue to have alternative bases for whistleblower claims including “the powerful network of legislative enactments . . . such as whistle-blower protection laws and labor codes [which are] available to those who seek to expose wrongdoing.”

In brief, here are the facts of the case: In February 2000, Mr. Ceballos investigated a search warrant affidavit at the request of defense counsel. According to Ceballos, this type of investigation was not an unusual practice.

Ceballos then found what he thought to be serious misrepresentations in the affidavit and sent a memorandum to his superiors, recommending the case be dismissed. His superiors disagreed and proceeded with the prosecution.

Ceballos then informed defense counsel of his findings, and defense counsel subpoenaed Ceballos to testify at the hearing regarding his investigation into the affidavit. Ceballos also provided his memorandum to the defense counsel.

At first, Ceballos initiated an employment grievance claiming that, following the above events, he suffered retaliatory employment actions, including job reassignment, transfer to another courthouse, and denial of a promotion. The employment tribunal found that Ceballos had not suffered any retaliation. Ceballos then raised a First Amendment claim in Federal Court.

Ceballos lost his case at U.S. District Court for the Central District of California, won on an appeal to U.S. Court of Appeals for the Ninth Circuit, and had that appeal overturned by the U.S. Supreme Court last month.

Among the existing federal protections for whistleblowers: The Whistleblower Protection Act, which provides civil service employees access to the Office of Special Counsel (OSC), the Merit Systems Protection Board (MSPB), and the U.S. Court of Appeals for the Federal Circuit; and the False Claims Act, which contains whistleblower protections for employees who are retaliated against over a protected act.

In addition, the Government Reform Committee has approved two bipartisan bills, H.R. 1317 and H.R. 5112 that would extend whistleblower protections.

H.R. 1317 would: add as a protected disclosure by a federal employee any lawful disclosure he or she believes is credible evidence of waste, abuse,

or gross mismanagement; make changes to the laws governing the Merit Systems Protection Board and the Office of Special Counsel, including giving jury trials to federal whistleblowers if the Office of Special Counsel does not take corrective action within 180 days on their retaliation complaints; add Transportation Security Administration baggage screeners to the list of covered employees; and require the Government Accountability Office to study security clearances revocations taking effect after 1996 with respect to personnel who filed claims in connection with such security clearance revocations.

H.R. 5112, introduced by Committee Chairman Tom Davis, would prohibit an employee or applicants for employment of a covered agency from being discriminated against as a reprisal for disclosing covered information to an authorized Member of Congress or to an authorized official of an executive agency, the Department of Justice, or the Inspector General of the employee's employing covered agency.

Witnesses:

Panel I

Stephen M. Kohn, Chair, National Whistleblowers Center

Roger Pilon, Vice President for Legal Affairs, CATO Institute

Panel II

Richard Ceballos, Deputy District Attorney, Los Angeles County District Attorney's Office

William Bransford, General Counsel, Senior Executives Association

Mimi Dash, Council President, Fairfax Education Association (Retired)

Lisa Soronen, Staff Attorney, National School Boards Association

Barbara Atkin, Deputy General Counsel, National Treasury Employees Union

Richard J. Bergstrom, Partner, Morrison & Foerster, LLP

Joe Goldberg, Assistant General Counsel, American Federation of Government Employees, AFL-CIO

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